

David J. Bradley, Clerk

Respondent.

**SECRET**

CIVIL ACTION NO. H-18-0544

ORDER ADOPTING RECOMMENDATION  
OF THE MAGISTRATE JUDGE

Pending is Respondent's Motion for Summary Judgment (Document No. 18) against Petitioner's Federal Application for Writ of Habeas Corpus (Document No. 1). The Court has received from the Magistrate Judge a Memorandum and Recommendation recommending that Respondent's Motion for Summary Judgment be DENIED and that this case be STAYED until such time as the Texas Court of Criminal Appeals rules on Petitioner's current, pending state application for writ of habeas corpus. Petitioner has filed objections to certain "findings" but does not object to the determinations made in the Memorandum and Recommendation on the statute of limitations or exhaustion of state law remedies issues. Objection 1 and Objection 2 are SUSTAINED: Petitioner's state application for writ of habeas corpus was filed on May 19, 2016 - not May 11, 2016; and the number of days for purposes of statutory tolling under between May 19, 2016 and February 22, 2017, is 280. Petitioner's other

Objections are OVERRULED, but without prejudice to being re-urged in connection with any future statute of limitations determination.

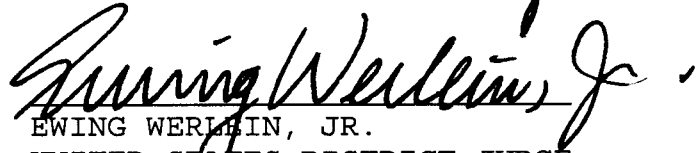
Taking those rulings on Petitioner's Objections into account, the Court, after having made a *de novo* determination of Respondent's Motion for Summary Judgment, Petitioner's Application for Writ of Habeas Corpus, and the Memorandum and Recommendation, is of the opinion that the findings and recommendations of the Magistrate Judge, with the exception of that noted above, are correct and should be and hereby are accepted by the Court. Accordingly,

It is ORDERED and ADJUDGED for the reasons set forth in the Memorandum and Recommendation of the United States Magistrate Judge filed on January 23, 2019, as modified to reflect on pages 2, 5, and 6 that Petitioner's state application for writ of habeas corpus was filed on May 19, 2016, and on page 5, that the time between May 19, 2016 and February 22, 2017, is a period of 280 days, that Respondent's Motion for Summary Judgment (Document No. 18) is DENIED, and consideration of Petitioner's Application for Writ of Habeas Corpus (Document No. 1) is STAYED pending final ruling by the Texas Court of Criminal Appeals on Petitioner's current state application for writ of habeas corpus. The parties shall advise

the Court of any such ruling within fourteen days of it being entered.

The Clerk will enter this Order and send copies to all parties of record.

Signed at Houston, Texas this 20<sup>TH</sup> day of February, 2019.

  
EWING WERLEIN, JR.  
UNITED STATES DISTRICT JUDGE